

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PREIEST DARRIN SMITH,

Plaintiff,

v.

TACOMA POLICE DEPARTMENT,

Defendant.

CASE NO. C21-5624 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 5, and Plaintiff Preiest Darrin Smith’s objections to the R&R, Dkt. 6.

Plaintiff commenced this action in August 2021 and seeks to proceed *in forma pauperis* (“IFP”). Dkt. 1. On September 1, 2021, after reviewing Plaintiff’s proposed complaint, the Court ordered Plaintiff to show cause or amend the complaint for failing to state a claim upon which relief could be granted. Dkt. 2. Plaintiff filed his proposed amended complaint on September 24, 2021. Dkt. 3.

On October 26, 2021, Judge Creatura issued the instant R&R, recommending that the Court deny the motion to proceed IFP and dismiss the matter without prejudice for

1 lack of jurisdiction. Dkt. 5. The R&R concluded that the Court does not have federal
2 question jurisdiction, 28 U.S.C. § 1331, over Plaintiff’s proposed claims because the
3 proposed amended complaint lists several Washington State laws as the basis for the
4 action. Dkt. 5 at 2. The R&R further concluded that federal question jurisdiction is
5 lacking because Plaintiff named the Tacoma Police Department instead of the City of
6 Tacoma as the defendant, despite prior warnings to Plaintiff about naming the proper
7 defendant. *Id.* at 2–3. Finally, the R&R concluded that the Court does have diversity
8 jurisdiction, 28 U.S.C. § 1332, because both parties are in Tacoma, Washington. Dkt. 5 at
9 2. On November 10, 2021, Plaintiff filed objections to the R&R. Dkt. 6.

10 The district judge must determine de novo any part of the magistrate judge’s
11 disposition that has been properly objected to. The district judge may accept, reject, or
12 modify the recommended disposition; receive further evidence; or return the matter to the
13 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

14 Plaintiff objects to the R&R’s recommendation to dismiss his case, arguing that he
15 can bring an action in federal court under 42 U.S.C. § 1983. Dkt. 6. But, as the Court has
16 explained, an action under § 1983 “must be brought against a municipality (such as the
17 City of Tacoma) and not a department of the municipality.” Dkt. 2 at 2. The Court agrees
18 with the R&R that jurisdiction is lacking based upon Plaintiff’s proposed amended
19 complaint.

20 The Court having considered the R&R, Plaintiff’s objections, and the remaining
21 record, does hereby find and order as follows:

22 (1) The R&R is **ADOPTED**;

1 (2) Plaintiff's motion for leave to proceed *in forma pauperis*, Dkt. 1, is

2 **DENIED;**

3 (3) This matter is **DISMISSED without prejudice**; and

4 (4) The Clerk shall enter a JUDGMENT and close the case.

5 Dated this 28th day of December, 2021.

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8 BENJAMIN H. SETTLE
9 United States District Judge
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